

Serial No.: 10/628,320

Response to Final Office Action mailed June 7, 2005

REMARKS/ARGUMENTS

The Final Office Action of June 7, 2005 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Amended Claims

Claim 1 has been amended to recite "the valve being controlled by a human/machine interface." Support is at least found in paragraph 8 on page 16 of the specification as filed, thus no new matter has been added.

Rejection under 35 U.S.C. § 103(a) – Isham & Runciman/Rios & Lansdale

Claims 1, 3, 4, and 7 were rejected as being unpatentable under 35 U.S.C § 103(a) over Isham in view of Runciman or Rios. Claims 2, 5 and 6 were rejected as being unpatentable under 35 U.S.C § 103(a) over Isham in view of either Runciman or Rios in further view of Lansdale.

Previously the Applicants noted that there was no teaching in any of the cited references that provided any motivation for combining Runciman and/or Rios with Isham. The Examiner appears to accept this as true but has argued that the "functional equivalence of the two configurations warrant a finding of obviousness in this case." Applicants respectfully submit, however, that the cylinders depicted in Runciman and Rios are unsuitable for use with the beverage system disclosed by Isham. Isham discloses a bag-in-box configuration with a pump 104 that removes syrup from the containers 101. (Isham, C. 11, L. 17-23) In contrast, Runciman and Rios disclose complex cylinders that would not readily work in the system provided by Isham without substantial modification because the cylinders in Runciman and Rios have built in pumps. Thus, there would be no motivation to combine Runciman and Rios with Isham because it would simply add cost and complexity while defeating the benefits of Isham. Furthermore, it is unclear how Isham would be modified so as to accept such cylinders. Applicants respectfully assert that nothing in any of the references of record provides any guidance for such a modification and therefore there is no expectation of success. Thus, as there is no motivation to combine nor is there any likelihood of success, Applicants respectfully submit the Office Action fails to make a *prima facie* case of obviousness.

In addition, while basically admitting that Isham does not actually teach that element 102 is a valve, the Office Action states "element 102 as shown on Figure 3 is clearly depicted as a multi-way

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valve capable of selective placement of the containers 101 in communication with the downstream line." While the Applicants respectfully disagree, claim 1 has been amended to recite "the valve being controlled by a human/machine interface." Even if the element 102 in Isham can be read to be a valve, something the Applicants strongly disagree with, Isham certainly fails to disclose element 102 as being controlled by the recited interface. The other references of record do not correct this deficiency in Isham. Therefore, the references of record fail to disclose, suggest or teach all the limitations of independent claim 1.

Claims 2-7 depend from claim 1 and are believed to be allowable for at least the reasons that claim 1 is allowable and for the additional limitations recited therein. For example, claim 6 recites a second cylinder with a piston pump. The Office Action suggested that it would have been obvious to combine Lansdale with Isham. Other than Applicants' disclosure, however, there does not appear to be any such motivation. Thus, the Office Action has failed to provide any support for such a combination. A *prima facie* obviousness rejection requires a showing of motivation to combine and it is improper to use the Applicants' application as a roadmap to combine references. Applicants' respectfully submit the present rejection does not meet this standard.

Accordingly, for at least the above reasons, withdrawal of this ground of rejection is requested.

Rejection under 35 U.S.C § 103(a) – Bond & Moran

The Office Action rejected claim 8 as being unpatentable under 35 U.S.C. § 103(a) over Bond in view of Moran.

The Office Action suggests that the motivation for combining Moran with Bond was for "improved strength of the bag." Applicants respectfully submit, however, that the material bag of Bond would not benefit from the addition of the reinforced corners depicted in Moran. As can be seen, Bond provides for a continuous peripheral seal formed by heat sealing two layers together. See Figures 2, 4, 5, and 8. Therefore, providing a reinforcement in the peripheral seal would not help increase the strength of the bag disclosed in Bond – indeed Applicants respectfully submit such a act would likely weaken the bag in Bond. Therefore, contrary to the reasoning provided by the Office Action, a person of ordinary skill in the art would not have any motivation to combine Moran with Bond. Accordingly, as there is no proper motivation to combine the two references (nor would there be an expectation of success), the Office Action has failed to provide sufficient support for a *prima facie* obviousness rejection.

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Accordingly, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

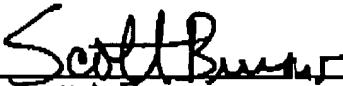
All rejections and objections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: September 1, 2005

By: _____



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